



'I was traveling on IH-10 Westbound approaching Loop 1604 when I saw the pursuit on the eastbound access road of IH-10. I turned around and saw two patrol vehicles with their emergency lights on following the vehicle, a black SUV, with other police vehicles following a good distance away. I asked the supervisor managing the pursuit, Sgt. David Bornhauser, for permission to join the pursuit since my vehicle was equipped with video and could document the pursuit. Sgt. Bornhauser gave me permission and I became the primary vehicle, recording the pursuit.

'I have reviewed the video, attached to Defendants' Motion for Summary Judgment as Exhibit B, which is the audio and video recording of the incident made the basis of this lawsuit. The video fairly and accurately depicts the incident that occurred on the morning of August 4, 2011.

'The video begins with me joining the pursuit at 3:10 a.m. as I traveled East on IH-10 just before the exit to Loop 410. I took the lead and followed Abernathy while running my emergency lights and sirens, but he refused to stop. I followed Abernathy as he took the exit from IH-10 East to Loop 410 West and continued on Loop 410 until he took the exit to Highway 151. At 3:20 a.m. I used my radio's P.A. system to order Abernathy to pull over but he refused. Abernathy continued on Highway 151 until he exited at Military Drive. Using my vehicle's P.A. system I repeatedly ordered Abernathy to pull over but he continued to refuse to do so. At 3:23 a.m., I again used the P.A. system to order Abernathy to pull over. Abernathy turned on to Deepwater Bay which is a dead end street. I informed the dispatcher and other officers that Deepwater Bay is a dead end street. This pursuit began on La Cantera Parkway and ended on Deepwater Bay, a distance of approximately 14.4 miles.

'Abernathy pulled into the cul-de-sac and turned to the left, stopping his vehicle on the left side of the cul-de-sac with his vehicle partly in a driveway and partly in the street. I pulled straight into the cul-de-sac, stopping my patrol vehicle behind Abernathy's vehicle and angled in a position allowing me to quickly get out of my vehicle to attempt to subdue Abernathy if he ran. I could see Abernathy moving around in his vehicle and, due to the information I heard on the radio earlier, I was afraid he was going to bail out and maybe run toward one of the houses in the cul-de-sac. I quickly exited my vehicle and approached the driver's side of his vehicle. I saw another officer approach the passenger side. I immediately ordered Abernathy to get out of the vehicle. I could see he was sweating profusely. I tried to open the driver's side door but it was locked. I ordered him to open the door. I had my hand on my gun holster but did not remove my weapon. Abernathy put his hands up and I saw he did not have a weapon. I continued to yell commands at Abernathy to unlock the door and to get out of the vehicle.

'Abernathy opened the door and got out of the vehicle. I was able to grab him by the wrist and I repeatedly ordered him to get on the ground. I also heard Officer Galvan order Abernathy to put his hands behind his back. I noticed that Abernathy was shorter than I but was heavier. I weighed approximately 220 pounds at the time of the incident. I got ahold of Abernathy's right arm and handcuffed his right wrist. The video captured the sound of the handcuffing at approximately 3:25:45. Although when we were initially trying to get Abernathy out of his car and under control, he can be heard saying he is complying with our orders, in reality, except for the brief period while I was putting the handcuff on his right hand, he was

physically resisting the entire time. As soon as I got the handcuff on Abernathy's right hand, he began pushing up from the ground and pulled his right hand, with the dangling handcuff, to his chest. I yelled that Abernathy was pulling away from me. Abernathy continued to push up from the ground in an apparent attempt to get up.

'I was very concerned that if I lost control of Abernathy, he could swing the loose handcuff at me and other officers as a weapon. I knew Officer Francisco Galvan was with me so I told him to use his Taser on Abernathy. Abernathy was on his knees getting to his feet at this point. Officer Galvan deployed his Taser just as Abernathy turned away from me and the Taser wires made contact with me, and, I believe, the switch on my COBAN microphone. It took me a few seconds after getting shocked to recover. Either the Taser wires contacted the microphone switch and shorted it out, or I accidentally hit the mute button on the microphone during the struggle, because my microphone went mute at 3:25:57 on the video. In either event, I was unaware my microphone became muted, because at the point it did I was still very actively engaged in the struggle with Abernathy. Right after being Tased, Abernathy and I ended up against another vehicle in the driveway, and I was a little dazed. About that time Abernathy ran toward the front door of a house and I then heard glass breaking as Abernathy was struggling with another officer.

'I ran toward Abernathy with my Taser in my hand and advised the officers present I was going to use the Taser. I deployed my Taser while 5-7 feet away from Abernathy. Abernathy stopped struggling for a very short time and then took off running. When he began running he stretched the Taser wires and broke the connection. I believe Abernathy only received a 1 to 2 second shock. Abernathy ran to a house and it appeared he was trying to get in the front door. I ran toward Abernathy while reloading my Taser. I got within 5 to 7 feet of him and deployed the Taser a second time. Abernathy went to his knees for 2 to 3 seconds, got up, and ran toward the house he had originally run toward, stretching the Taser wires and breaking them off again. I believe he got about a 2-3 second shock that time. I holstered the Taser since Abernathy had been tasered three separate times with no apparent effect. At this point I lost sight of Abernathy.

'I heard a K9 officer yelling to a fellow K9 officer to "Go get the dog." I ran back into the street and saw Abernathy running away from a police dog. This can be seen in the video taken from my vehicle at approximately 3:26:56. Abernathy runs by with the handcuff dangling off his right wrist followed by a police dog and six uniformed San Antonio Police Officers, including myself. The police dog grabbed Abernathy's pants so I ran over and tackled Abernathy into some bushes. I tried to gain control of Abernathy's right arm with the handcuff but he pushed up with his left arm and pulled his right arm toward his chest. At 3:28:08 my microphone came back on, either because it reactivated or I again hit the button accidentally. My microphone began recording the audio of the struggle again. At 3:28:17 an officer can be heard telling the dispatcher that we did not have Abernathy under control. I was physically winded from the prolonged struggle with Abernathy and had also received a Taser shock and wanted to get Abernathy under control again before he could use the dangling handcuff as a weapon against me or the other officers. In an attempt to gain control of Abernathy I hit him with a closed fist in the head area at least twice. My voice can be heard on the audio ordering Abernathy multiple times to put his hands behind his back. In spite of the number of officers at

the scene, because of Abernathy's violent resistance and the fact that the multiple Tasers had not brought him under control, at 3:29:01, I asked the dispatcher to send more help.

'Other officers were also engaged in physical contact with Abernathy including one officer who deployed his baton. I believe Abernathy was also Tasered at least once more at about that time. After Abernathy was on the ground and other officers were controlling his upper body, I slid down and controlled his legs to prevent him from pushing up off the ground again. Other officers were then finally able to handcuff Abernathy's arms behind his back. Once he was handcuffed all the officers involved got off Abernathy, and Abernathy was put in a sitting position leaning against the legs of an officer standing behind him. In spite of the fact the struggle had ended, Abernathy continued to rock from side-to-side as though he was trying to get away from the officer. I can be heard on the audio telling him basically to "stop, it's over". According to the video it appears Abernathy was finally handcuffed between approximately 3:30:20 and 3:30:50 a.m.

'While Abernathy was in the seated position I could hear him yelling to his mother and heard her yelling back to him. The video captures this exchange at approximately 3:31:17. EMS was called.

'I then went to a house in the cul-de-sac where Abernathy's family members had gathered to explain what was going on. I tried to answer their questions and told them the police had tried to get Abernathy to pull his vehicle over and that it took multiple officers to get him under control. I told them they could talk to a supervisor if they wanted to. The video captures my conversation with the family from approximately 3:32:58 to about 3:36 a.m.

'I injured my right hand in the struggle and thought I had broken it. I was transported from the scene to Santa Rosa Westover Hills for treatment of my hand. Although my hand was not broken in the struggle with Abernathy, I suffered injuries to the tendons in my hand that had to be repaired surgically.

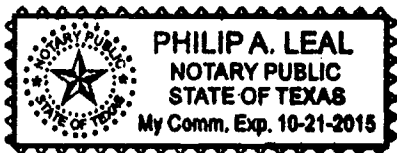
'During this incident, Abernathy refused to pull over his vehicle and led the police on a chase for approximately 14.4 miles. Once at the scene he refused to allow us to handcuff him and violently physically resisted our attempts to restrain him and bring him under control. He was able to withstand multiple uses of intermediate weapons to his body and exhibited superhuman strength and stamina. It took multiple officers after a prolonged struggle to finally restrain Abernathy and place him in handcuffs.

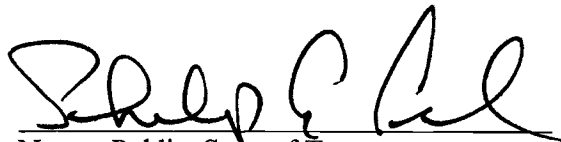
'At no time during the encounter with Abernathy did I use any more force than was reasonably necessary to bring Abernathy under control. At no time after he was handcuffed did I or any other Officer hit or kick Abernathy or use any type of force against him. At no time during the incident did I see any Officer present use any more force against Abernathy than was reasonably necessary to overcome his resistance and restrain him."

'Further affiant sayeth not.'

  
NATHAN PRESTON

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public for the State of Texas, by the aforementioned affiant, NATHAN PRESTON, on this the 2nd day of March, 2015.



  
Notary Public, State of Texas

My commission expires: 10/21/15